

APPEAL NO. 162058
FILED NOVEMBER 21, 2016

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on August 24, 2016, with the record closing on September 1, 2016, in (city), Texas, with (hearing officer) presiding as hearing officer. The hearing officer resolved the disputed issues by deciding that: (1) the compensable injury of (date of injury), extends to a left thumb partial thickness tear of the abductor pollicis brevis and the opponens pollicis musculature and left thumb MCP joint effusion; (2) the compensable injury of (date of injury), does not extend to post-traumatic stress disorder or major depressive disorder; (3) the appellant (claimant) reached maximum medical improvement (MMI) on April 25, 2016; (4) the claimant's impairment rating (IR) is two percent; and (5) the claimant had disability resulting from the compensable injury sustained on (date of injury), from July 28, 2015, through February 16, 2016, but not thereafter through the date of the CCH. The hearing officer specifically noted that disability before July 28, 2015, and after August 24, 2016, the date of the CCH, was not determined in the decision.

The claimant appealed, disputing the hearing officer's determinations that the compensable injury does not extend to post-traumatic stress disorder or major depressive disorder, MMI, IR, and that portion of the disability determination that the claimant did not have disability after February 16, 2016. The claimant argues that she met her burden to establish that the compensable injury extends to post-traumatic stress disorder and major depressive disorder. The claimant contends that she is not at MMI because she needs further medical treatment and has been referred for participation in a functional restoration program and that she had disability from July 28, 2015, through the CCH. The respondent (carrier) responded, urging affirmance of the disputed extent of injury, MMI, IR, and disability determinations.

The hearing officer's determinations that the compensable injury of (date of injury), extends to a left thumb partial thickness tear of the abductor pollicis brevis and the opponens pollicis musculature and left thumb MCP joint effusion and that the claimant sustained disability as a result of the compensable injury of (date of injury), from July 28, 2015, through February 16, 2016, were not appealed and have become final pursuant to Section 410.169.

DECISION

Affirmed in part as reformed and reversed and remanded in part.

The parties stipulated that on (date of injury), the claimant sustained a compensable injury and the compensable injury includes a left thumb sprain/strain and left wrist sprain/strain. The claimant testified that she was injured when a client grabbed her left hand and wrist while snatching a cell phone out of her hand.

We note that the hearing officer incorrectly identified Gregory Peavy, carrier representative, as an attorney. Gregory Peavy is an adjuster.

A review of the record reflects that the parties stipulated that on (date of injury), the claimant was an employee of Phoenix House Foundation, Inc., employer. The hearing officer mistakenly listed Ashley Furniture Industries, Inc. as the employer in the stipulation in his decision and order. We reform stipulation 1.B. to read that: On (date of injury), the claimant was the employee of Phoenix House Foundation, Inc., employer.

Additionally, a review of the record reflects that the parties stipulated that on (date of injury), the employer provided workers' compensation insurance with New Hampshire Insurance Company, carrier. The hearing officer mistakenly listed Trumbull Insurance Company as the carrier in the stipulation in his decision and order. We reform stipulation 1.C. to read that: On (date of injury), the employer provided workers' compensation insurance with New Hampshire Insurance Company, carrier.

EXTENT OF INJURY

That portion of the hearing officer's determination that the compensable injury of (date of injury), does not extend to include post-traumatic stress disorder or major depressive disorder is supported by sufficient evidence and is affirmed.

DISABILITY

That portion of the hearing officer's determination that the claimant did not have disability after February 16, 2016, through the date of the CCH on August 24, 2016, is supported by sufficient evidence and is affirmed.

MMI/IR

Section 401.011(30)(A) defines MMI as "the earliest date after which, based on reasonable medical probability, further material recovery from or lasting improvement to an injury can no longer reasonably be anticipated." Section 408.1225(c) provides that the report of the designated doctor has presumptive weight, and the Texas Department of Insurance, Division of Workers' Compensation (Division) shall base its determination of whether the employee has reached MMI on the report of the designated doctor unless the preponderance of the other medical evidence is to the contrary.

Section 408.125(c) provides that the report of the designated doctor shall have presumptive weight, and the Division shall base the IR on that report unless the preponderance of the other medical evidence is to the contrary, and that, if the preponderance of the medical evidence contradicts the IR contained in the report of the designated doctor chosen by the Division, the Division shall adopt the IR of one of the other doctors. 28 TEX. ADMIN. CODE § 130.1(c)(3) (Rule 130.1(c)(3)) provides that the assignment of an IR for the current compensable injury shall be based on the injured employee's condition as of the MMI date considering the medical record and the certifying examination.

The hearing officer determined that the claimant reached MMI on April 25, 2016, with a two percent IR as certified by (Dr. Q), the Division-appointed designated doctor. After the CCH, the hearing officer sent a letter of clarification (LOC) to Dr. Q requesting that he rate the following conditions: left thumb sprain/strain, left wrist sprain/strain, left thumb partial thickness tear of the abductor pollicis brevis and the opponens pollicis musculature; and left thumb MCP joint effusion. The hearing officer correctly noted in his discussion that there was no certification that rated the compensable injury which required him to send the LOC. Dr. Q responded in a narrative dated August 26, 2016. The certification was based on a previous examination conducted by Dr. Q on May 24, 2016. In his narrative report, Dr. Q states that the claimant reached MMI on April 27, 2016, which was the date the claimant last saw her operating hand surgeon. Dr. Q noted that the claimant's hand surgeon documented that the claimant was overall making progress and the surgeon's examination revealed full range of motion (ROM) in all planes, no pain noted with palpation, and grip strength equal bilaterally. Further, Dr. Q noted on April 27, 2016, the hand surgeon discharged the claimant and documented that the claimant was not a candidate for additional surgeries or injections. Dr. Q assessed two percent IR based on loss of ROM of the claimant's left wrist and left thumb. However, on the Report of Medical Evaluation (DWC-69) Dr. Q certified that the claimant reached clinical MMI on April 25, 2016, with a two percent IR.

There is an internal inconsistency between the MMI date Dr. Q certified in his narrative report and the MMI date Dr. Q certified on the DWC-69. Because the narrative report and DWC-69 list completely different dates regarding when the claimant reached MMI, we do not consider that internal inconsistency to be a clerical error that can be corrected. See Appeals Panel Decision (APD) 130739, decided May 7, 2013, and APD 141281, decided August 7, 2014. Accordingly, we reverse the hearing officer's determination that the claimant reached MMI on April 25, 2016.

With regard to the IR, Rule 130.1(c)(3) provides that an assignment of IR shall be based on the claimant's condition as of the MMI date. Given that we have reversed the

hearing officer's MMI determination, we also reverse the hearing officer's determination that the claimant's IR is two percent.

There are several other MMI/IR certifications in evidence. In a narrative report dated May 24, 2016, and accompanying DWC-69, Dr. Q provided an MMI date and IR for the claimant's left wrist sprain/strain, left thumb sprain/strain, partial tear of the abductor pollicis brevis and the opponens pollicis musculature, left thumb MCP joint effusion, post-traumatic stress disorder, and major depressive disorder. In his narrative report Dr. Q noted that the claimant reached MMI on April 25, 2016, on the date the neuropsychologist determined that the claimant did not sustain any psychological effects from the compensable injury. Dr. Q assigned zero percent impairment for both the post-traumatic stress disorder and major depressive disorder. As previously noted, the hearing officer's determination that the compensable injury of (date of injury), does not extend to include post-traumatic stress disorder or major depressive disorder is affirmed. Because this certification considers conditions not part of the compensable injury, it cannot be adopted.

Dr. Q also examined the claimant on November 19, 2015, and certified that the claimant had not yet reached MMI. Dr. Q noted in part that the claimant had not yet started the recommended psychotherapy. In this certification, Dr. Q considered post-traumatic stress disorder and major depressive disorder which have been determined not to be part of the compensable injury and accordingly, it cannot be adopted.

(Dr. P) was initially appointed as designated doctor but on October 9, 2015, his examination was cancelled by Commissioner Order because he was not appropriately qualified to perform the examination. However, neither the claimant nor Dr. P were aware of the cancellation and Dr. P examined the claimant on October 15, 2015. Dr. P certified that the claimant had not yet reached MMI based on diagnoses of left wrist sprain/strain, left CMC sprain/strain, and deQuervain's tenosynovitis. Dr. P's certification does not consider all of the compensable conditions and considers some conditions that have not been determined to be compensable and accordingly, it cannot be adopted.

There are three certifications of MMI/IR from (Dr. D), a required medical examination doctor. Dr. D examined the claimant on February 2, 2016, and provided three certifications of MMI/IR. In the first certification, Dr. D certifies that the claimant reached MMI on July 28, 2015, with a zero percent IR. This certification only considered a left wrist sprain/strain and a left thumb sprain/strain. This certification did not consider the entire compensable injury and accordingly, it cannot be adopted.

In his second certification, Dr. D certified that the claimant reached MMI on February 16, 2016, with a zero percent IR. However, this certification considered post-

traumatic stress disorder and major depressive disorder which have been determined not to be part of the compensable injury. Accordingly, this certification cannot be adopted.

In his third certification, Dr. D also certified that the claimant reached MMI on February 16, 2016, with a zero percent IR. Dr. D considered post-traumatic stress disorder, major depressive disorder and deQuervain's disease. This certification also considers conditions which have been determined not to be part of the compensable injury. Accordingly, this certification cannot be adopted.

(Dr. F) a referral doctor acting in place of the treating doctor, examined the claimant on June 16, 2016, and certified that the claimant had not reached MMI. Dr. F considered the following conditions: radial styloid tenosynovitis, sprain of the left wrist, and sprain of the MCP joint of the left thumb. Dr. F does not consider all of the compensable conditions and considers a condition that has not been determined to be part of the compensable injury. Accordingly, the certification from Dr. F cannot be adopted.

Since there is no certification in evidence that can be adopted, we remand the issues of MMI and IR to the hearing officer for further action consistent with this decision.

SUMMARY

We affirm that portion of the hearing officer's determination that the compensable injury of (date of injury), does not extend to include post-traumatic stress disorder or major depressive disorder.

We affirm that portion of the hearing officer's determination that the claimant did not have disability, resulting from the compensable injury sustained on (date of injury), after February 16, 2016, through the date of the CCH on August 24, 2016.

We reverse the hearing officer's determination that the claimant reached MMI on April 25, 2016, and remand the issue of MMI to the hearing officer for further action consistent with this decision.

We reverse the hearing officer's determination that the claimant's IR is two percent and remand the issue of IR to the hearing officer for further action consistent with this decision.

REMAND INSTRUCTIONS

Dr. Q is the designated doctor in this case. On remand, the hearing officer is to determine whether Dr. Q is still qualified and available to be the designated doctor. If Dr. Q is no longer qualified or is not available to serve as the designated doctor, then another designated doctor is to be appointed to determine the claimant's MMI/IR for the (date of injury), compensable injury.

If Dr. Q is still qualified and available to serve as the designated doctor, the hearing officer is to advise Dr. Q of the inconsistency between his narrative and his DWC-69 and request that Dr. Q clarify the date he certified that the claimant reached MMI for the compensable injury of (date of injury), and certify an IR in accordance with the Guides to the Evaluation of Permanent Impairment, fourth edition (1st, 2nd, 3rd, or 4th printing, including corrections and changes as issued by the American Medical Association).

The parties are to be provided with the designated doctor's response and certification of MMI/IR and are to be allowed an opportunity to respond. The hearing officer is then to make a determination on MMI/IR consistent with the evidence and this decision.

Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the hearing officer, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Division, pursuant to Section 410.202 which was amended June 17, 2001, to exclude Saturdays and Sundays and holidays listed in Section 662.003 of the Texas Government Code in the computation of the 15-day appeal and response periods. See APD 060721, decided June 12, 2006.

The true corporate name of the insurance carrier is **NEW HAMPSHIRE INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
211 EAST 7TH STREET, SUITE 620
AUSTIN, TEXAS 78701-3218.**

Margaret L. Turner
Appeals Judge

CONCUR:

K. Eugene Kraft
Appeals Judge

Carisa Space-Beam
Appeals Judge